

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DIRECT MARKETING CONCEPTS, INC., et
al.,

Defendants.

CIVIL ACTION NO. 04-CV-11136GAO

AFFIDAVIT OF ROBERT MAIHOS

I, ROBERT MAIHOS, declare as follows:

1. I am a principal shareholder of defendants Direct Marketing Concepts, Inc. ("DMC") and ITV Direct, Inc. ("ITV"), and am responsible for the day-to-day operations of both companies. I make this affidavit on the basis of my own personal knowledge of the facts set forth herein and could testify competently thereto if called to do so.

2. DMC and ITV Direct, located in Beverly, Massachusetts, are media and marketing companies that collectively employ over 140 individuals in Massachusetts.

3. DMC and ITV Direct have maintained accurate and complete books and records of its business since inception in 2001. All transactions of the companies have been properly recorded in the books and records, including all payments to employees, salaries and benefits, all expenses and all distributions. There have been no "secret" payments of any kind that are not recorded in the books of the company, nor does the company maintain any offshore or secret bank accounts. Neither DMC nor ITV have secreted any assets or made any fraudulent transfers in anticipation of the FTC's civil action.

4. In connection with ITV's production of an infomercial for Alex Guerrero and his product Supreme Greens with MSM, Guerrero stated to me personally that he is a doctor and

operates a clinic in California. He stated that he has cancer patients, AIDS patients, and patients with MS, diabetes and Parkinson's disease. He stated that through his clinic he conducted a study of over 200 of patients, all of whom were diagnosed as terminally ill, and that all but eight of these patients are still alive. This study was also confirmed by fitness celebrity Tony Robbins, who discussed Alex Guerrero and his clinic on one of his fitness shows. A copy of the transcript of that show is attached as Exhibit A. On several occasions, when we requested that Guerrero provide the scientific support and studies concerning these claims, Guerrero confirmed to me that he possessed such documentary and clinical support. He also stated this to our sales force in a taped presentation. A copy of that transcript is attached as Exhibit B.

5. In connection with the infomercials produced by ITV for Alex Guerrero's Supreme Greens, ITV itself did not make any statements about the product. Rather, all of the statements were presented solely as the opinions of Guerrero and that fact was clearly disclosed to viewers of the infomercials. In addition, the infomercials and all other promotional materials produced for these products had express disclaimers, clearly stating that results could vary and that the product was not a cure for any disease. Moreover, the infomercial disclosed that ITV was not confirming or attesting that there existed scientific support for all of the claims made by Guerrero. Not only did ITV require these disclaimers throughout the infomercials, but the networks running the infomercials also required them.

6. In addition to the disclaimers above, ITV also received indemnification from Guerrero's company Healthy Solutions for the health claims made in the infomercial. A copy of the Distribution Agreement containing the indemnification clause is attached to the affidavit of Donald Barrett as Exhibit E. Thus, to the extent that the FTC is able to demonstrate that Guerrero's claims violated any laws or regulations, ITV fully intends to seek complete indemnification from Healthy Solutions. Such a demand has already been made and is subject to a pending action in the Boston federal court.

7. I have reviewed the Declaration of Scot Sarver submitted by the FTC in support of its request for a receiver and an asset freeze. That declaration is filled with untrue statements,

based on rank hearsay and lacking any factual support. Moreover, Sarver has a significant motive to lie about DMC, ITV and Donald Barrett. Specifically, and directly contrary to his declaration, Sarver was recently fired by ITV for violating his agreement not to compete with the business and stealing from the company. He established a separate business and was moving customers and opportunities to this new business. When confronted with these facts and his non-compete agreement, he admitted that he had broken into a secure location, obtained his employment agreement and shredded it in an effort to destroy evidence of his wrongful conduct. He was then terminated from his employment. Since his termination from ITV, we have become aware that Sarver is actively seeking to compete with ITV, by selling identical products, reaching out to ITV's distributors and contacting ITV's customers. He would personally greatly benefit from any damage done to the operations of DMC and ITV.

8. In addition, Sarver has been the subject of several complaints of sexual harassment and officially reprimanded on one occasion. He was also caught on videotape engaged in improper sexual conduct in his office at ITV. Despite the fact that he was married at the time, we have become aware of at least five separate incidents of sexual conduct between Mr. Sarver and employees of ITV. These acts also contributed to the decision to terminate his employment and Mr. Sarver was very unhappy when these matters were brought to his attention.

10. Subsequent to his termination from ITV, Sarver also attempted to defraud the Massachusetts unemployment bureau and sought ITV's assistance in his conspiracy by asking ITV to lie about his employment status. When ITV refused to do so and his unemployment claim was denied, he was extremely upset. Since his termination from ITV, several employees have reported to me that Sarver has publicly stated that he will do whatever is necessary to harm DMC, ITV, myself and Donald Barrett.

11. Sarver's statements in his declaration about alleged secret payments and transfers of assets and funds of DMC, ITV and/or Direct Fulfillment are untrue. All of the transactions of these companies are reflected in each company's books and records and I am not aware of any transaction that has not been properly recorded. All funds paid by the company to myself or Mr.

Barrett are recorded properly and we have paid all required taxes on those amounts. All purchases of personal items for myself have been made by myself and are reflected in my personal tax returns. Neither I, Mr. Barrett, DMC, ITV nor Direct Fulfillment has made any fraudulent transfer of any asset, nor do the companies maintain offshore or secret bank accounts or similar arrangements for the secretion of assets or funds.

12. Mr. Sarver's statements about DMC's and ITV's sales force are also untrue. DMC and ITV stress the importance of quality control to all our employees and require them to disclose the terms of any of our programs, including our autoship program fully and clearly. A new system purchased by the company in late-2003 also assures that sales personnel are monitored and adhere to the company's policies. Correspondence relating to these procedures is attached as Exhibit C. While any commission-based sales structure can lend itself to potential abuses by the sales staff, we seek to identify these abuses immediately and we take appropriate action, including terminating the offending employee.

13. I have also read the affidavit of Richard Cushman submitted by the FTC. Mr. Cushman was hired by the company because he was the husband of Mr. Barrett's wife's sister. Since that time, she has filed for divorce and Mr. Cushman has been fired by the company. I am aware of numerous threats made by Mr. Cushman against DMC, ITV and Mr. Barrett, including threats made prior to the company's holiday party. I have also been told by employees that Mr. Cushman has vowed to "bring down" the company any way he can. Because of these threats, we sent Mr. Cushman a trespass letter, prohibiting him from entering any of the properties or facilities of DMC or ITV.

14. Mr. Cushman's statements in his affidavit about the company's finances are untrue. No company funds have been secretly used for personal expenses. In addition, Mr. Barrett does not own a boat, jet-skis or a house in Florida. No assets of the company are being secreted and there have never been any fraudulent transfers of assets by myself or Mr. Barrett.

15. Mr. Cushman's statements regarding the call center are also false. As noted above, all of ITV's sales representatives are educated in the policies of the company, which

include providing full disclosure to customers and obtaining the customer's express consent before any charges are made to any credit card account. These procedures have been significantly enhanced by new technologies, all acquired after Mr. Cushman had left the company. Thus, he is not competent to testify about the current policies and procedures employed by ITV to ferret out rogue sales personnel, which are substantial.

16. Based upon the FTC's concerns with the infomercials for coral calcium and Supreme Greens with MSM, DMC and ITV have ceased running those infomercials completely. The coral calcium infomercial has not run in over a year, and all versions of the Supreme Greens infomercial were halted in April 2004. DMC and ITV have no intention of running either infomercial in the future.

17. DMC and ITV have other profitable operations and business that is unrelated to coral calcium, Supreme Greens or any other ingestible dietary supplement. The profit from these operations, as well as any recovery on DMC's and ITV's indemnification claims, could be used to satisfy any ultimate judgment or settlement obtained by the FTC. The relief the FTC is currently seeking would prevent these avenues of recovery.

18. The FTC also is not seeking emergency relief against the defendants Triad ML Marketing, Inc., King Media or Allen Stern. This does not make sense to me, since we informed the FTC months ago that Stern and his businesses possessed all of the merchant accounts for the coral calcium product and is the sole distributor of coral calcium to various retail outlets. Thus, all of the funds from the infomercial sales of coral calcium through the time that the infomercial was pulled from the air, as well as all the proceeds of current retail sales, are being received by Stern and his companies. Apparently, Triad is also still running a 30 second advertisement for Coral Calcium Daily, but the FTC is not seeking any emergency relief in connection with this advertisement. We are not currently running any media of any kind for coral calcium.

19. Likewise, the FTC is not seeking the extraordinary relief of a receiver or an asset freeze against Healthy Solutions, or any of its officers or directors, including Guerrero. As recognized by the FTC, Healthy Solutions is still operating a website and selling Supreme

Greens with MSM, based upon the representations made by Guerrero "as seen on TV", and the false representation that he is a doctor. A copy of the current web page operated by Healthy Solutions through which it sells Supreme Greens with MSM is attached as Exhibit D. Based on recent data, the Supreme Greens website was one of the most popular Internet searches in the last month and we understand that Guerrero is working with new distributors and increasing his network for the product, all based upon the substantial media exposure he received through the airing of the infomercial by ITV. To the contrary, ITV has ceased running the infomercial, does not intend to buy any additional product from Healthy Solutions, and intends to focus its future energies and business on other products.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 4th day of June, 2004 at Beverly, Massachusetts.

/s/ Robert Maihos
ROBERT MAIHOS